

DEPOSITION OF CLARENCE MOSES

MARCH 17, 2006

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THE ESTATE OF ERIK A. POWELL,) Civil No.
 THROUGH PERSONAL REPRESENTATIVE) CV04-00428 LEK
 MARY K. POWELL; THE ESTATE OF)
 JAMES D. LAUGHLIN, THROUGH PERSONAL)
 REPRESENTATIVE RAGINAE C. LAUGHLIN;))
 MARY K. POWELL, INDIVIDUALLY;)
 RAGINAE C. LAUGHLIN, INDIVIDUALLY;)
 CHLOE LAUGHLIN, A MINOR, THROUGH)
 HER NEXT FRIEND, RAGINAE C.)
 LAUGHLIN,)

Plaintiffs,)

vs.)

CITY AND COUNTY OF HONOLULU,)

Defendant,)

and)

CITY AND COUNTY OF HONOLULU,)

Third-Party Plaintiff,)

vs.)

UNIVERSITY OF HAWAII, a body)
 Corporate; JOHN DOES 1-10, JANE)
 DOES 1-10; DOE CORPORATIONS and)
 DOE ENTITIES,)

Third-Party Defendants.)

DEPOSITION OF CLARENCE MOSES

Taken on behalf of Plaintiffs at the Law Offices of Ian L. Mattoch, 737 Bishop Street, Suite 1835, Honolulu Hawaii, commencing at 1:00 p.m. on March 17, 2006, pursuant to Notice.

Before: WILLIAM T. BARTON, RPR, CSR NO. 391

EXHIBIT "31"

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1 Q. Thank you. And in your experience, have you ever
2 put buoys out by the cable channel?

3 A. Yeah. They do have it now. But we didn't have
4 it before for, just to mark the channel.

5 Q. Do you remember who put the buoys up to mark the
6 channel?

7 A. I think the supervisory did. But the thing
8 doesn't last long. With age and durability, it breaks or
9 whatever. The buoy seems to move, and they don't put it
10 back until they can find time to put it back.

11 Q. Do you recall on the date of the incident on this
12 day, July 19, 2002, that there were four buoys across the
13 channel?

14 MR. MAYESHIRO: Lacks foundation.

15 A. That day, I can't recall.

16 Q. But you've seen the channel with four buoys
17 across it?

18 A. Before. Off and on, yeah.

19 Q. What was the purpose of those four buoys, again?

20 A. To mark the channel.

21 Q. Where it was?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

25 Q. And is that for the swimmers or for you guys, for

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1 the lifeguards?

2 A. It's for everybody.

3 Q. To know where the channel is?

4 A. To know where the channel is. Usually we mark
5 that. Everybody asks where the thing is, the channel. And
6 they always seem to miss it.

7 MS. WATERS: Do you want to take a break now?

8 MR. MAYESHIRO: Sure.

9 (Whereupon, a recess was taken.)

10 BY MS. WATERS:

11 Q. We're back on the record.

12 Do you know whether Witches Brew was closed on
13 that day of the drownings?

14 MR. MAYESHIRO: You mean the ledge?

15 BY MS. WATERS:

16 Q. The ledge that goes out to Witches Brew.

17 A. I can't recall. But they did put a fence out
18 there. That's when they completely close it. I don't know
19 what the date was on that.

20 Q. The fence?

21 A. Uh-huh.

22 Q. You don't know whether it was before the date of
23 this accident or after?

24 A. I can't recall that time.

25 Q. That fence, that would just prevent people from

1 walking out to Witches Brew?

2 A. The ledge, yeah.

3 Q. The ledge. Prior to the date of the drowning,
4 was there a way -- or did the park close certain areas,
5 like Witches Brew, to the public?

6 A. I don't recall.

7 Q. How about was like, the Toilet Bowl, was that
8 closed to the public at the time?

9 A. It was closed. But that day -- I was at 3 Alpha.
10 I wouldn't recall that one, because usually I don't make
11 the call on that side.

12 Q. Who would make the call on that side?

13 A. The 3 Bravo guy.

14 Q. Would 3 Alpha make the call as to whether the
15 ledge was closed?

16 A. Yeah.

17 Q. And you don't remember whether it was closed?

18 A. Like I said, if the fence was there, it's
19 automatically closed. I wasn't too sure whether it was
20 before that date or what, the fence was up.

21 Q. And is the fence permanent?

22 A. Yeah. It's permanent.

23 Q. So as of today, nobody is supposed to walk out on
24 that ledge?

25 A. Well, at the day that they put that up, yes.

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1 Q. On the day of these incidents, though, you said
2 Neves ran out there?

3 A. Yeah.

4 Q. Would he have been able to get out there if there
5 was a fence?

6 A. Yeah. If there was one.

7 Q. How?

8 A. You just go right around it.

9 Q. I see. Okay. So even though there's a fence
10 there, there's still a way to get around it?

11 A. Yeah.

12 Q. And is it your understanding that on the date of
13 these incidents, the jet ski rescue patrol went from
14 location to location, and that --

15 A. Pretty much.

16 Q. -- they were roaming?

17 A. Yes.

18 Q. As of now, is that how it works?

19 A. Still the same.

20 Q. Do you remember the approximate number of people
21 who were at Hanauma Bay that day?

22 MR. MAYESHIRO: Calls for speculation.

23 A. The whole bay?

24 Q. Yeah, the park --

25 A. The beach area? Water area?